IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 224 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABU JINA - Appellant(s)
Versus
STATE OF GUJARAT - Defendant(s)

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Appearance :
MR MS SANGITA PAHWA ON BEHALF OF PM THAKKAR for Appellant,
MR DIPEN DESAI AGP for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 24/08/2006

ORAL JUDGMENT

1. The present is a Second Appeal under sec.100 of the

Code of Civil Procedure against the judgment and decree passed by the learned District Judge, Junagadh in Civil Regular Appeal No.95 of 1980 decided on 19/10/1982, confirming the judgment and decree passed in Regular Civil Suit No.756 of 1975 by the learned Civil Judge, the appellant has preferred this appeal.

2. The appellant was a Police Constable. He was subjected to certain inquiry and after the orders were passed, one Mr.Pillai, District Superintendent of Police had issued him notice to show cause. Against the show cause notice, the plaintiff preferred Regular Civil Suit No.221 of 1974, ad-interim injunction was granted in favour of the plaintiff, but later on the injunction was vacated and new incumbent Mr.Guha passed the final order directing termination of the present plaintiff. The said order was passed on 15/9/1975. The plaintiff, being aggrieved by his dismissal order dtd.15/9/1975, filed Regular Civil Suit No.756 of 1975 in the Court of learned Civil Judge. Another person namely Akhambhai Babarbhai who was also terminated along with the plaintiff, had filed Civil Suit No.780 of 1975. Both the suits were finally dismissed. Being aggrieved by the said judgment of the trial court,

the said two plaintiffs preferred Civil Appeal Nos.95 and 96 of 1980. It was contended before the Courts below that no opportunity of hearing was afforded to the plaintiff, the officer who issued the notice to show the cause, was transferred, therefore, the incumbent in his office could not decide the matter finally and in any case, the punishment was shockingly disproportionate in comparison to the misconduct. The learned appellate court dismissed both the appeals. We do not know whether said Akhambhai has filed any Second Appeal or not, but the present appellant namely Babubhai Jinabhai has filed the present Second Appeal.

3. The Appeal has been admitted on 24/10/1985 on the following substantial question of law;

(i) Whether Civil Court can go into the question of excessiveness and resultant arbitrariness of the punishment?

4. In the present matter, the misconduct levelled against the present appellant was that though he is a member of a disciplined force, he opened an assault on another member of the same force. The facts were found true.

Before the punishment could be awarded, a notice to show cause was issued, but instead of filing any reply, the present appellant filed Civil Suit No.221 of 1974 and obtained an injunction resulting into stalemate of the situation. After the injunctions were vacated, the appellant himself did not appear before the authority nor replied the notice. The authority i.e. the officer who entered in the office subsequent to transfer of Mr.Pillai, considered everything and decided the matter against the interest of the present appellant.

5. It is trite law that the Civil Court and even the High Court would not act as an appellate authority, revisional authority or reviewing authority in the matter of departmental proceedings. Before the competent court of law, the question can only be that whether the procedure adopted by the disciplinary authority or enquiring authority was contrary to the law and such wrong procedure has vitiated the final outcome. In the present matter, no such illegality has been brought on record. Even otherwise, such question has not been framed by this Court while admitting the appeal.

6. The appeal has been admitted probably on the question of quantum of punishment. In the present matter, unless it is shown to the Court that the punishment is shockingly disproportionate to the misconduct, it would not be possible for the Court to interfere in the matter. The appellant was charged with the misconduct that he had opened an assault on a Head Constable. The said conduct on the part of the present appellant, who was a constable, with any lenient approach or latitude cannot be termed to be a small wrong. In the question of punishment, the Court ordinarily would not interfere and in the case like the present, it would not be possible for the Court to interfere in the matter, because subordinate has opened an assault on a person who was senior to him. Taking into consideration the totality of the circumstances, I am of the opinion that it is not possible for the Civil Court to interfere in the question of award of punishment or quantum of punishment. The appeal deserves to and is accordingly dismissed. No costs.

7. Let a decree be framed accordingly.

(R.S.GARG,J.)

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